## REMARKS

**Status of the Claims**

Claims 31 - 59 are pending and under consideration. With this Amendment, claims 31 – 59 are being canceled, without prejudice against their reintroduction into this or one or more - timely filed continuation, divisional or continuation-in-part applications, and Claims 60 - 96 are being newly added. Thus, after entry of this Amendment, Claims 60 - 96 are pending and under consideration. The restriction/election requirements raised in the Office Action are discussed in more detail, below.

**The Amendments of the Claims**

New claims 60 - 63 are drawn to isolated polypeptides comprising amino acid sequence SEQ ID NO:2. and/or immunogenic fragments thereof. Support for new claims 60 - 63 can be found, *inter alia*, in original claims 1 – 5.

New claims 64 - 67 are drawn to fusion proteins comprising the amino acid sequence SEQ ID NO:2 and/or immunogenic fragments thereof. Support for new claims 64 - 67 can be found, for example, in original claim 6.

New claims 68 - 74 are drawn isolated polynucleotides comprising nucleotide sequence SEQ ID NO:1, which encodes a polypeptide having the amino acid sequence SEQ ID NO:2 and/or immunogenic fragments thereof. Support for new claims 68 -74 can be found, for example, in original claims 7 – 14.

New claims 75 – 79 are drawn to expression vectors, host cells and methods for producing the isolated polypeptides and polynucleotides of claims 60 - 74. Support for new claims 75 – 79 can be found in original claims 15 - 18.

New claims 80 - 96 are drawn to immunogenic compositions comprising the polypeptides or fusion proteins of claims 54 and 58. Support for new claims 80 - 96 can be found, for example in original claims 19-21.

No new matter has been added.

**Telephonic Interview**

Applicant thanks the Examiner for the courtesy extended during the telephonic interview held February 17, 2006 with the undersigned attorney of record, at which the lack of unity requirements were clarified.

**National Stage Restriction in 35 U.S.C. § 371 Applications Under 35 U.S.C. § § 121 and 372**

The Patent Office, in accordance with 37 C.F.R. § 1.499, has required Applicants to select one invention from the following combination of sequences:

> (i) a single disclosed species from a genus comprising the following variants: SEQ ID No: 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, or 72 as recited in claim 31; and
>
> (ii) one DNA sequence used to screen an appropriate library to obtain the SEQ ID Nos. recited above (i) from the genus comprising the following variants: SEQ ID No: 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71 or 73 as recited in claim 43.

Based on the telephonic interview, it is applicants understanding that they are to elect a single polypeptide sequence from previously pending claim 31, and a polynucleotide comprising a nucleotide sequence encoding the elected polypeptide.

Applicants elect the polypeptide comprising the amino acid sequence SEQ ID NO:2 from (i) and the polynucleotide comprising the DNA sequence SEQ ID NO: 1[1] from (ii) for further prosecution on the merits.

**National Stage Election of Species Under 35 U.S.C. § § 121 and 372**

[1] Table 1, line 1 at column 3, of the published application shows that the polynucleotide having SEQ ID NO:1 encodes the polypeptide having amino acid sequence SEQ ID NO:2.

Upon election of a combination of two sequences, restriction is further required to one of the following six Groups:

> Group 1, claims 31-43, 44, 45, 46, 47, 48, 49, 50 and 57 drawn to an isolated polynucleotide and derivatives thereof, a method for expressing a polynucleotide, a genetically modified host cell, a method for expressing a polypeptide, and an immunogenic composition;
>
> Group II, claims 51 and 54, drawn to an antibody immunospecific for a member of a non-typeable H. influenzae and a therapeutic composition comprising said antibody;
>
> Group III, claims 52 and 53 drawn to a method of diagnosis;
>
> Group IV, claim 54, drawn to a therapeutic composition useful in treating humans;
>
> Group V, claims 55 and 56, drawn to a method for generating an immunogenic response; and,
>
> Group VI, claims 58 and 59, drawn to a lipo-oligosaccharide.

Applicants elect Group I. Based on the telephonic interview, it is applicants understanding that Group I includes the isolated polypeptides and fusion proteins recited in previously pending claims 31 – 36, replaced herein by pending claims 60 - 67.

## CONCLUSION

Elected claims 60 - 96 are believed to satisfy all of the criteria for patentability and are in condition for allowance. An early indication of the same is therefore kindly requested.

Respectfully submitted,

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